

### **REMARKS/ARGUMENTS**

This Amendment is submitted in response to the Office Action mailed August 29, 2008. As explained in further detail below, Applicants have amended independent Claim 1 for clarification and to further distinguish the cited references. Claim 15 has been added. Applicants have also submitted a Declaration under 37 C.F.R. §1.132 ("Declaration") in order to remove a reference relied upon in the Office Action as prior art. In light of the amendments and subsequent remarks, as well as the attached Declaration, Applicants respectfully request reconsideration and allowance of the claims.

In the Office Action, the Examiner rejects Claims 1 and 4-14 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Appl. Publ. No. 2004/0088040 to Mangiardi et al. The Examiner also rejects Claims 1, 2, 4-7, and 9-13 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Appl. Publ. No. 2005/0004657 to Burgermeister. Moreover, the Examiner rejects Claim 8 under 35 U.S.C. §103(a) as being unpatentable over Burgermeister.

In Applicants' previous response, independent Claim 1 was amended to recite that the stent is configured to reduce traumatization of a vessel wall and that the widened head ends include convexly rounded edge sections extending between the convexly rounded front section and the concavely rounded throat sections. Although Applicants were able to overcome the previously cited Trapp reference, the Examiner now relies on the '040 publication and maintains the rejection in light of Burgermeister as disclosing Claim 1.

The '040 publication is assigned to Alveolus Inc. (the assignee of the present application) and is directed to a stent including a scaffolding having heads (30) and respective apertures defined therein that are configured to receive suture therethrough. The Examiner relies on FIGS. 1 and 8 of the '040 publication as allegedly "clearly" anticipating Claim 1. Furthermore, the Examiner disagrees with Applicants' previous arguments that Burgermeister does not illustrate the ends of the stent and contends that FIG. 5 discloses an end of a stent.

Submitted with this Amendment is a Declaration establishing that Eric Mangiardi invented the portions the prior Mangiardi application asserted as prior art, and also the subject matter of Claim 1, in order to remove the '040 publication as 35 U.S.C. §102(e) prior art (see

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paragraph 2 of the Declaration). Applicants refer the Examiner to MPEP §2136.05 which states that “when the unclaimed subject matter of a reference is applicant's own invention, applicant may overcome a *prima facie* case based on the patent, U.S. patent application publication or international application publication, by showing that the disclosure is a description of applicant's own previous work.” Because the ‘040 publication and Claim 1 of the present application share a common inventive entity (see paragraph 5 of the Declaration), the ‘040 publication cannot be relied upon as prior art under §102(e).

Although Applicants disagree with the rejection of independent Claim 1 in light of Burgermeister, Applicants have amended independent Claim 1 to recite that each of the struts are substantially parallel to one another in the initial state. For example, FIG. 1 of the present application clearly illustrates that each of the struts (7, 8, 9, 10) is substantially parallel to one another in the initial state. This particular configuration allows the stent to be contracted to a reduced diameter for delivery within a lumen. In contrast, FIG. 5 of Burgermeister illustrates a flexible stent that includes struts (210, 220) that are clearly not parallel to one another in an unexpanded configuration. In fact, the struts of Burgermeister are incapable of being disposed parallel to one another given that the struts are disposed in an undulating manner and that the shorter struts are angled so as to intermesh with the larger opposed ends in an unexpanded configuration. Therefore, Burgermeister does not teach or suggest independent Claim 1.

In view of the remarks and amendments presented above, it is respectfully submitted that independent Claim 1 of the present application and those claims that depend therefrom are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicants’ undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

The patentability of the independent claims has been argued as set forth above and thus Applicants will not take this opportunity to argue the merits of the rejection with regard to the dependent claims. However, Applicants do not concede that the dependent claims are not independently patentable and reserve the right to argue the patentability of the dependent claims at a later date if necessary. In particular, Applicants note that the Examiner does not even address several of the dependent claims that are not taught or suggested by Burgermeister. For

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example, neither reference teaches or suggests deflection elements for looping thread around the outside of the support frame, as recited by Claim 4, or connectors as recited by any one of Claims 5-7.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Trent A. Kirk  
Registration No. 54,223

**Customer No. 37305**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

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